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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID RAY MAXWELL,

Defendant and Appellant.

A124491

(Marin County
Super. Ct. No. SC160885A)

Appellant David Ray Maxwell pled guilty to felony possession of a firearm by a person with a specified misdemeanor. (Pen. Code, § 12021, subd. (c)(1).) He was placed on probation for three years, subject to several conditions including a prohibition on his use or possession of cannabis, including marijuana for medical use. On appeal, Maxwell contends that this condition of probation is unreasonable and overbroad. We affirm.

I. FACTS

According to the probation officer's report, on August 21, 2008, San Rafael police officers received a report of a man running around an apartment complex with a knife. Officers responding to the apartment complex heard what sounded like a shotgun racking. The officers encountered appellant David Ray Maxwell and another man outside the apartment building. Maxwell told police that he thought someone was trying to steal his motorcycle. He had gone to the carport armed with a knife to investigate. He had deliberately made a lot of noise on the way to the carport hoping to scare off any would-be thief. He had asked his neighbor to accompany him around the complex to ensure that everything was secure.

Maxwell gave police his consent to search his apartment. Although he had denied having any weapons there, a shotgun was found under his bed along with live and dummy shotgun shells. At a police station interview, Maxwell explained that after he checked out the carport to make sure that no one was stealing his motorcycle, he returned to his apartment. He got out a shotgun, ejected the dummy rounds, and loaded live ammunition. After thinking better of the idea, Maxwell unloaded the gun and put it under his bed. He told police that the shotgun belonged to his wife and that he was unaware that his prior criminal convictions made it unlawful for him to possess a firearm.

In September 2008, a complaint was filed charging Maxwell with possession of a firearm by an ex-felon and possession of a firearm by a person with a specified misdemeanor conviction. (Pen. Code, § 12021, subds. (a)(1), (c)(1).) The complaint alleged that Maxwell had suffered two prior felony convictions for resisting arrest and battery. The battery had been reduced to a misdemeanor after he successfully completed his term of probation. In December 2008, Maxwell pled guilty to felony possession of a firearm by a person with a specified misdemeanor in exchange for a grant of probation and the promise that if he fully satisfied the terms of his new grant of probation, this conviction would be reduced to a misdemeanor.

The trial court referred Maxwell to the probation department for a presentence investigation and report. That report revealed, inter alia, that since the early 1990's Maxwell has suffered from bipolar disorder, a condition that resulted in depression, agoraphobia, and panic attacks. He had taken various psychotropic drugs to treat these symptoms until 2003 when he stopped using those medications. Instead, he used prescribed medical marijuana to treat his bipolar disorder, anxiety, nausea, and vomiting. He smoked a total of two grams of medical marijuana a day in three doses. Several times, he had attempted to overdose with medication and he had a history of mental health commitments. The probation officer expressed her concern that Maxwell's actions in response to the perceived theft attempt—arming himself with a knife, considering use of a shotgun, and failing to call the police to handle the situation—were inappropriate. The report recommended a three-year term of probation that included a condition of

probation prohibiting Maxwell from using, consuming, or possessing cannabis, including medical marijuana.

At a hearing, the prosecution also raised a concern for public safety based on Maxwell's possession of a firearm. After reviewing the probation report, the trial court opined that Maxwell's mental health problems might not have been properly treated by the use of medical marijuana. It ordered Maxwell to meet with a psychiatrist to evaluate any potential causal link between his response to the perceived motorcycle theft and his mental health.

The court-appointed psychiatrist was not Maxwell's treating physician and he had insufficient documentation of Maxwell's mental health history to make a definitive diagnosis. However, he suggested that Maxwell's decision to possess a firearm may have resulted from paranoia and anxiety. He advised the court that cannabis is neither a clinically proven nor commonly accepted treatment for psychiatric disorders. Furthermore, the scientific literature shows that marijuana may even cause or exacerbate some mental health symptoms. The psychiatrist acknowledged that cannabis is a known and accepted treatment for medical ailments such as nausea and vomiting, but noted that there were other available medications that were more widely accepted treatments for Maxwell's symptoms. The psychiatrist also reported that Maxwell began smoking cannabis at the age of 18 and had continued using the drug, on and off, for the past 30 years.

In March 2009, Maxwell was placed on probation with various conditions, including a specific prohibition against using even marijuana for medical purposes. In support of this condition of probation, the trial court cited the psychiatrist's report, Maxwell's history of civil commitments, and his 30-year use of marijuana. It expressed its concern that Maxwell's reaction to the perceived theft was extreme. It read the psychiatrist's report to suggest that Maxwell had a history of paranoia and expressed its own opinion that the incident underlying this case stemmed from extreme paranoia.

II. DISCUSSION

A. *Standard of Review*

In the present case, Maxwell argues that the trial court imposed a condition of probation that is overbroad and unreasonable. On appeal, we review the trial court's imposition of a challenged probation condition for abuse of discretion. (*People v. Welch* (1993) 5 Cal.4th 228, 234.) A sentencing court has broad discretion in setting the terms and conditions of probation. (Pen. Code, § 1203.1; *People v. Carbajal* (1995) 10 Cal.4th 1114, 1121; *People v. Welch, supra*, 5 Cal.4th at p. 233.) In its classic formulation of a trial court's discretion to impose probation conditions, the California Supreme Court held, inter alia, that a condition of probation may be invalid if it is not reasonably related to future criminality. (*People v. Lent* (1975) 15 Cal.3d 481, 486.) With these principles in mind, we address Maxwell's specific contentions.

B. *Overbreadth*

Maxwell first contends that the trial court's condition of probation prohibiting the use, possession, or consumption of medical marijuana is overbroad. He argues that the forbidden conduct does not reasonably relate to his future criminality. Maxwell asserts that this condition of probation must be predicated on a link between his current gun possession offense and his mental illness. We disagree. The type of future criminality addressed by a condition of probation does not have to be the same type of criminality for which the individual is presently charged or convicted, so long as the condition is reasonably related to his or her reformation and rehabilitation. (*People v. Balestra* (1999) 76 Cal.App.4th 57, 65.)

We find that the trial court had evidence before it from which it could conclude that a prohibition on medical marijuana use was reasonably related to Maxwell's reformation and rehabilitation. Cannabis is neither a clinically proven nor commonly accepted treatment for any psychiatric disorder. The use of marijuana may even exacerbate symptoms of a mental disorder. Maxwell's decision to respond to the attempted theft of his motorcycle may have been influenced by his mental health issues. Treatment of those mental disorders with an unproven medication that could actually

aggravate his symptoms raises the specter that Maxwell might overreact in the future in a manner that might endanger public safety.

Maxwell cites *People v. Tilehkooh* (2003) 113 Cal.App.4th 1433, 1444 in support of his claim that a probation condition proscribing the lawful use of medical marijuana cannot serve a rehabilitative purpose. This case is factually distinguishable from the case before us. In *Tilehkooh*, the Court of Appeal expressly limited its holding to situations in which no claims were raised that a defendant's conduct endangered others. (*Id.* at p. 1437.) In Maxwell's case, by contrast, the incident triggering the condition of probation did raise public safety concerns. Thus, we are satisfied that the trial court's ban on the use of medical marijuana was reasonably related to reducing future criminality within the meaning of *People v. Lent*, *supra*, 15 Cal.3d 481.

C. Reasonableness

Finally, Maxwell contends that the condition of probation is unreasonable. Our Supreme Court requires that the reasonableness of a probation condition be supported by evidence in the record. (*In re Bushman* (1970) 1 Cal.3d 767, 776-777.) Here, the trial court had evidence of Maxwell's mental health history and the incident triggering his conviction. It also had evidence from which it could reasonably infer that Maxwell's continued treatment of his mental disorders with only medical marijuana would result in his future criminality. We find the condition was reasonable and that the trial court did not abuse its discretion by imposing this condition of probation.

III. DISPOSITION

The judgment is affirmed.

Reardon, J.

We concur:

Ruvolo, P.J.

Sepulveda, J.